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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/670,027

09/25/2003

James Kemp

IR 6896-07

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04/17/2006

COLGATE-PALMOLIVE COMPANY

909 RIVER ROAD

PISCATAWAY, NJ 08855

EXAMINER

DOAN, ROBYN KIEU

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 04/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/670,027

Applicant(s)

KEMP ET AL.

Examiner

Robyn Doan

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14, 16-18 and 24-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14, 16-18 and 24-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Applicant's Amendment filed 12/29/05 has been entered and carefully considered. Claims 14, 24 and 25 have been amended. Claims 15 and 22-23 have been canceled. Limitations of amended claims have not been found to be patentable over prior art of record and newly discovered prior art, therefore, claims 14, 16-18, 24-30 are rejected under the new ground rejections as set forth below.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14, 24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Del Mas in view of Lee and in view of Priest (U.S. Pat. # 1,847,496) and Gutt (U.S. Pat. # 5,257,704).

With regard to claim 14 and 26, Del Mas discloses a toothbrush (figs. 1, 2) comprising a head connected to a neck, the neck being integrally connected with a handle see figure 1, the head having a plurality of bristles extending outwardly therefrom; the handle having a figurine attached thereto see figures 1, 2. Del Mas does not disclose the handle having a compartment and a figurine being provided and held stationary in

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the compartment. Del Mas also does not disclose the handle having two transparent sections, the sections may be connected and disconnected whereby the figurine may be removed and replaced in the compartment and the junction of the two sections being covered by an indicia band. Lee discloses a glass-drinking vessel (fig. 1) including a transparent handle (12, col. 2, lines 6-10) including a compartment (13), a figurine (2) being provided and held stationary in the compartment. The figurine being visible through the transparent handle and may be removed, replaced in the compartment. Priest discloses a toothbrush (figs. 1 and 20 comprising a head (11), a hollow handle (14) for containing dental floss or cleaning implement; the handle comprises two sections (35, 21) removably connected together (at 37). Gutt discloses a lipstick tube (fig. 2) comprising a body, a circumferential band (6) and a base (5); Gutt also shows a band (1) having an indicia pull tab (8) attached to it. The indicia band being disposed between the junction of the circumferential band and the base. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the figurine and the transparent material of the handle portion as taught by Lee into the handle of Del Mas for providing attraction to the handle. It would also have been obvious to one having an ordinary skill in the art at the time the invention was made to construct the handle having two sections as taught by Priest and to employ the indicia band as taught by Gutt into the handle of Del Mas in order to remove and replace the objects within the two sections as well as providing a tamperproof seal which includes information about the device. With regard to claim 24, Gutt, as disclosed above, shows the indicia band being disposed around a connecting edge (fig. 2, band 1 wraps around

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the connecting edge of circumferential band 6 and base 5) of two sections of the body. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the indicia band as taught by Gutt into the handle sections of Del Mas and Priest for the purpose of providing a tamperproof seal to the device.

Claims 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Del Mas in view of Lee and in view of Priest and Gutt as applied to claim 14 above, and further in view of Blaustein et al (U.S. Design Pat. # D459, 584).

With regard to claims 16 17, Del Mas in view of Lee and in view of Priest and Gutt disclose a toothbrush comprising all the claimed limitations in claim 14 as discussed above except for the handle being in the shape of a rocket-ship which has a plurality of fins extending from a bottom portion which stimulate rocket ship fins and act as support feet for holding the toothbrush in an upright position. Blausstein et al discloses a rocketship toothbrush handle (fig. 1) comprising a handle having a plurality of fins, see figure 1, extending from a bottom portion of the handle which act as support feet for holding the toothbrush in an upright position. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the rocketship handle as taught by Blaustein et al into the handle of Del Mas in view of Lee and in view of Priest and Gutt for the purpose of entertaining the children while brushing the teeth.

Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Del Mas in view of Lee and in view of Priest and Gutt as applied to claim 14 above, and further in view of Tortorice (U.S. Pat. # 6,000,410).

With regard to claim 25, Del Mas in view of Lee and in view Priest and Gutt disclose a toothbrush comprising all the claimed limitations in claim 14 as discussed above except for the neck removably connects with the handle. Tortorice discloses a toothbrush (fig. 3) comprising a neck (26) removably connecting (at 48) with a handle (44). It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the removable neck and the transparent handle as taught by Tortorice into the toothbrush of Del Mas in view of Lee and in view of Priest and Gutt for the purpose of allowing multiple handles to be used with the same brush component.

Claims 18 and 27-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Del Mas in view of Lee as applied to claim 14 above, and further in view of McCord (U.S. Pat. # 3,782,397).

With regard to claims 18 and 27-30, Del Mas in view of Lee and in view of Priest and Gutt disclose a toothbrush comprising all the claimed limitations in claim 14 as discussed above except for the handle being in the shape of a display case (claim 18). Del Mas in view of Lee and in view of Priest and Gutt also does not disclose the handle having at least one rib or four vertical ribs extending into the compartment and portions of the handle contact the figurine to further retain the figurine stationary in the

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compartment (claims 27-30). McCord discloses a toothbrush and dental floss dispenser (figs. 7, 7A) comprising a toothbrush handle (1) with two sections (1, 3) which may connect and disconnected, see figure 7. The handle being in the shape of a display case, see figure 2; the handle also including a compartment for holding a dental floss dispenser, see figure 7; at least one rib (4) extending in the handle compartment (col. 2, lines 11-16) for retaining the dental floss (6) stationary in the compartment, the ends of the rib (4) contacting one plug (5) of the dental floss 96) to further retain the dental floss stationary in the compartment, see figure 2. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the particular handle as taught by McCord into the handle of Del Mas in view of Lee and in view of Priest and Gutt in order to hold an item stationary within the compartment of the handle. It would also have been obvious to one having an ordinary skill in the art at the time the invention was made to construct four vertical ribs inside the handle's compartment since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140

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F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 14 and 24 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 21, 29-30 and 40 of copending Application No. 11/077,170 in view of Priest and Gutt. Claims 14 and 24 read on claims 21, 29-30 and 40 of the copending Application except for the handle having two sections, the two sections may be connected and disconnected whereby the figurine may be removed and replaced in the compartment and the junction of the two sections being covered by an indicia band. Priest discloses a toothbrush (figs. 1 and 20) comprising a head (11), a hollow handle (14) for containing dental floss or cleaning implement; the handle comprises two sections (35, 21) removably connected together (at 37). Gutt discloses a lipstick tube (fig. 2) comprising a body, a circumferential band (6) and a base (5); Gutt also shows a band (1) having an indicia pull tab (8) attached to it. The indicia band being disposed between the junction of the circumferential band and the base. It would have been obvious to one having an ordinary skill in the art at the time the invention was made to employ the figurine and the transparent material of the handle portion as taught by Lee into the handle of Del Mas for providing attraction to the



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handle. It would also have been obvious to one having an ordinary skill in the art at the time the invention was made to modify of the claims of the copending Application to include the handle having two sections as taught by Priest and the indicia band as taught by Gutt in order to remove and replace the objects within the two sections as well as providing a tamperproof seal which includes information about the device.

This is a provisional obviousness-type double patenting rejection.

Claims 14, 16, 18, 22, 25 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 5, 7, 8, 22, 23, 31-34 and 48 of copending Application No. 10/442,905. Although the conflicting claims are not identical, they are not patentably distinct from each other because all the elements of claims 14, 16, 18, 22, 25 are to be found in claims 1, 5, 7, 8, 22, 23, 31-34 and 48.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Conclusion***

Applicant's arguments with respect to claim 14 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

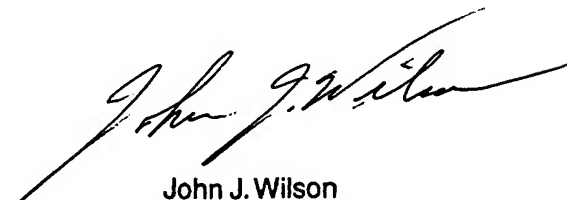
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robyn Doan  
Examiner  
Art Unit 3732



John J. Wilson  
Primary Examiner